

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
WRIT PETITION NO. 2130 OF 2009 (MS)

State Consumer Disputes Redressal Commission,
Uttarakhand.Petitioner.

Versus

Uttarakhand State Information Commission & Others.
.....Respondents.

Mr. A. Rab, Advocate for the petitioner.
Mr. Vipul Sharma, Advocate for respondent no. 1 and 2.

Hon'ble Sudhashu Dhulia, J.

Heard Sri A. Rab, Advocate for the petitioner as well
as Sri Vipul Sharma, Advocate for respondent no. 1 and
2. None appears for respondent no. 3.

The petitioner which is State Consumer Disputes Redressal Commission, Uttarakhand has filed this writ petition challenging the order of the State Information Commission by which the State Consumer Disputes Redressal Commission has been ordered to compensate respondent no.3 for not supplying the 'Hindi' translation of its order to respondent no. 3, and thereby causing obstruction in supplying information, under the Right to Information Act (from hereinafter referred to as the "Act").

The brief facts of the case are that an order passed by the State Consumer Redressal Commission, Uttarakhand was sought by an applicant (respondent no. 3), in a translated Hindi version in Devanagari script. The order in question was passed in English language. The applicant i.e. respondent no. 3 moved an application dated 9.7.2009 under Section 6 of the Act before the

Public Information Officer of State Consumer Disputes Redressal Commission, Uttarakhand with a request to supply the copy of the order in Hindi as she was not well versed with English language. Since this was not done, she filed an appeal before the appellate authority of the State Consumer Redressal Commission, as nominated under the Act, which was dismissed and the reasons given were that there was no provision under the law for supplying information to respondent no. 3 in Hindi nor are there any arrangements to translate orders in Hindi. Aggrieved by these orders, respondent no. 3 filed a statutory second appeal before the State Information Commission. The State Information Commissioner vide his letter dated 16.10.2009 first sought the opinion of the Law Secretary of the State as to what is the language of various courts (barring the High Court) in the State of Uttarakhand. The Law Department replied that the language of the State was Hindi and the language of the subordinate courts within the State of Uttarakhand was also Hindi. Consequently, the Information Commission after hearing the Consumer Commission came to the conclusion that the order was liable to be given to respondent no. 3 in Hindi and by not giving the order in Hindi, the rights of respondent no. 3 under the Act have been violated as the petitioner has caused obstructions in supplying the copy of the order in Hindi and therefore he has been ordered to pay a compensation of Rs. 6,600/- to the petitioner under Section 20 of the Act for causing obstruction in supplying the information to respondent no. 3.

There is an interesting dispute of facts in the present case. While it is a consistent stand of the State

Consumer Commission before the Information Commission as well as before this Court that they had never supplied the translated copy of the order in Hindi to respondent no. 3, the Information Commission while passing the impugned order has imposed penalty on an assumption that the translated copy of the order in Hindi was initially not supplied to respondent no. 3 but was supplied thereafter though belatedly and it was the late supply of copy of the order in Hindi that has caused obstruction and, therefore, the penalty has been calculated for the number of days of delay. It is an admitted case of the petitioner that they had not supplied the translated copy of the order to respondent no. 3 as according to the petitioner consumer commission is not liable to pass its orders in Hindi or to supply translated copy of the orders in Hindi, either under the Right to Information Act or any other provision of law. What this Court is, therefore, considering is only as to whether respondent no. 3 was liable to be given a copy of the order in Hindi, particularly when such a request was made before the State Consumer Commission, which is undisputedly a public authority under the Right to Information Act.

The argument of the petitioner is that there is no provision under the Consumer Protection Act to pass orders only in Hindi and since normally orders are passed in English and there being no provision for supplying the information in Hindi, the information can only be given in English. It is also contended that what was being sought was not in the nature of 'information', as contemplated under the Act. The appellate authority of the State Consumer Commission has also defended its

stand of writing its orders in English on various other grounds, which have been stated in the writ petition as well as its reply before the Information Commission (Annexure – 11 to the writ petition). The principal defence of the petitioner is that the Consumer Commission is not a subordinate court of the High Court and therefore the opinion of the Legal Remembrancer of Uttarakhand State that the language of the State as well as the language of subordinate court is Hindi will not be applicable to it. Now, assuming for the sake of argument that State Consumer Redressal Commission is not a 'Court', yet it surely is an instrumentality of the State. There is no dispute that the State Consumer Commission is a creature of a statute (which is Consumer Protection Act, 1986) and that it is a public authority and so are its President and other office bearers and officials. There is also no dispute on the fact that the official language of the State of Uttarakhand is Hindi. Article 345 of the Constitution of India, which is of much significance to the matter in issue reads as under:

“345. Official language or languages of a State.— Subject to the provisions of Articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language to be used for all or any of the official purposes of that State :

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.”

Under Article 345 of the Constitution of India, the erstwhile State of U.P. at first passed an Act known as the Uttar Pradesh Official Language Act, 1951 (U.P. Act

XXVI of 1951). It provided that Hindi in Devnagri script shall be used for the purposes which will be notified in the Official Gazette. Consequently, vide notification dated 1.11.1952 Hindi was to be used for the following respects :-

(I) Ordinances promulgated under Article 213 of the Constitution of India; and

(II) Orders, rules, regulation and byelaws issued by the Government of Uttar Pradesh under the Constitution of India or under any law made by Parliament or the Legislature of the State.

This was followed by the U.P. Official Language Supplementary Provision Act, 1968 whereby Section 2 of U.P. Act No. XXVI of 1951 was amended and Hindi in Devnagri script was to be used for all the official purposes of the State not covered by the earlier notification. It was a comprehensive measure and Hindi became the language for all official purposes in the State w.e.f. 26.1.1968.

This Court has been informed that the language in all the district courts and the subordinate courts as well as in the State tribunals is Hindi.

The State Consumer Commission has been created by a parliamentary statute i.e. Consumer Protection Act, 1986. The Commission was established under Section 9 of the Act.

It is in fact true that the State Consumer Commission is not a “subordinate court” of the High Court as the subordinate courts of High Court is defined under Article 235 of the Constitution of India which

would mean District Courts and the courts subordinate to it. Since the State Consumer Commission is neither a District Court nor a court subordinate to it, it is not a court subordinate to the High Court. This much is clear. Consequently, the opinion of the Legal Remembrancer, Uttarakhand that all subordinate courts including the Consumer Commission are supposed to give their judgments in Hindi may not be technically correct for the reason that the State Consumer Commission of Uttarakhand is not a subordinate court of the High Court. All the same, as already stated above the State Consumer Commission is an instrumentality of the State. Its officers and those who man the Commission are appointed by the State Government and the Commission functions as an agency of the State for redressal of certain grievances of the citizens. Since there are no separate enactments by the State Government of the Uttarakhand regarding the use of language by the State or its agencies by any Act or notification, the law as it existed prior to the appointed day in the erstwhile State of U.P. will continue to be in force in the State of Uttarakhand in view of Sections 87 read with Section 88 and 89 of the U.P. Reorganisation Act, 2000. Sections 87, 88 and 89 of the U.P. Reorganisation Act are reproduced as under :-

“87. Power to adapt laws. – For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until

altered, repealed or amended by a competent Legislature or other competent authority.

Explanation. – In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

88. Power to construe laws. – Notwithstanding that no provision or insufficient provision has been made under Section 87 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

89. Power to name authorities etc., for exercising statutory functions. – The Government of the State of Uttaranchal, as respects the transferred territory may, by notification in the Official Gazette, specify the authority, officer or person, who on or after the appointed day, shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.”

We must revert now to Article 343 of the Constitution of India which has declared Hindi to be its official language. Article 343 of the Constitution of India is reproduced as under :-

“343. Official language of the Union. – (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall

continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement :

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this Article, Parliament may by law provide for the use, after the said period of fifteen years, of : -

(a) the English language, or

(b) the Devanagari form of numerals,

For such purposes as may be specified in the law.”

As Article 343 itself says that although Hindi is the official language of the Union, under Article 343(2), for a period of 15 years from the commencement of the Constitution, English language shall continue to be used for all the official purposes of the Union, as it was being used before such commencement. Clause (3) of Article 343 further says that notwithstanding anything in the Article, the Parliament may by law, inter alia, provide for the use of English even after a period of 15 years. Under the said provision of the Constitution of India, before fifteen year period could come to an end, the Parliament had passed an Act known as the Official Language Act, 1963 whereby it was stated that “notwithstanding the expiration of the period of 15 years from the commencement of the Constitution, the English language may from the appointed day” shall continue to be used in addition to Hindi. Under the said provision the English continues to be used as an official language of the Union.

The basic principle underlying the Right to Information Act, 2005 is that “information”, as defined

under the Right to Information Act should be easily available to a citizen without any hindrance or bureaucratic nitpicking.

The Act as its 'objects and reasons' state, has been enacted to provide a "practical regime of right to information for citizens". Its objects are to secure access to information under control of public authorities with an aim to promote transparency and accountability in the working of every public authority.

"Public Authority" is defined under Section 2 (h) of the Act, which reads as follows:

"(h) "public authority" means any authority or body or institution or self-government established or constituted,--
(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, and includes any—
(i) body owned, controlled or substantially financed;
(ii) non-Government Organisation substantially financed, Directly or indirectly by funds provided by the appropriate Government;"

"Information" is defined under Section 2 (f) of the Act, which reads as follows:

"(f) "information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

“Record” is defined under Section 2 (i) of the Act, which reads as follows:

“(i) “record” includes---
(i) any document, manuscript and file;
(ii) any microfilm, microfiche and facsimile copy of a document;
(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
(iv) any other material produced by a computer or any other advice;”

More importantly, “right to information” is defined under Section 2 (j) of the Act, which reads as follows:

“(j) “right to information means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
(i) inspection of work, documents, records;
(ii) taking notes, extracts, or certified copies of documents or records;
(iii) taking certified samples of material;
(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

A public authority under the Act is under a statutory obligation to do such acts which have been described in detail in Section 4(1) and (2) of the Act. Under Section 4(1) of the Act, the catalogue of information, which a public authority must maintain and publish has been given. One of the mandatory duties cast upon the public authority, such as the petitioner, is given under Section 4(1)(d) which is to “provide reasons for its administrative or quasi judicial decisions to affected persons”. Section 4 of the Act reads as follows :-

4. Obligations of public authorities. – (1) Every public authority shall –

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act, -

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports in its regulations;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorizations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed, and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purpose of sub-section (1), every information shall be disseminate widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation. – For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.”

It is a common misconception prevailing even today that information must be given to citizens only when it is asked. This is not the case. Most of the information has to be given by the public authority, suo motu, under Section 4 of the Act which has to be periodically updated by various means of communications, including internet so that the public should have a minimum resort to the use of this Act for obtaining information. In other words the endeavour of the public authority should be such that the information should be readily available to citizens by available means of communication, including internet and the other means so that they may not have to request for information under Section 6 of the Act. Under Section 6 of the Act only a formal request has to be made in writing to the public information officer of a public authority which is duty bound to furnish the information within a period of one month. All the same, before one resorts to Section 6 most of the information concerning the public authority has to be disseminated to public in a manner, “which is easily accessible to the public”.

Now the intention of Legislature is absolutely clear from the unambiguous composition of the language of the statute, referred above. An information must be given to a citizen in the language, which he understands. It is the legislative mandate that “information” must be disseminated considering, inter alia, the “local language”

of the area. Similar is the mandate of the Constitution of India which is given under Article 350 read with Article 345 of the Constitution of India. Article 345 has already been referred to above. Article 350 for ready reference is being reproduced as below :-

“350. Language to be used in representations for redress of grievances. – Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.”

A citizen is entitled to submit a representation to any officer or authority of a Union or a State in any of the languages used in the Union or in the State, as the case may be. The language which is used in the State of Uttarakhand is Hindi. The representation in form of application was given by respondent no. 3 before the public authority i.e. the petitioner in Hindi. Hindi happens to be the official language of the Union as well as the State of Uttarakhand. Yet this information has not been supplied to respondent no. 3 in Hindi language. Therefore, there is a clear violation of the relevant provisions of the Right to Information Act as well as that of the Constitution of India by the petitioner and the State Information Commission is, therefore, right in holding so and awarding compensation to respondent no. 3.

Since the order passed by the public authority is a document, it comes within the definition of record, as defined under Section 2 (i) of the Act and the definition of ‘information’ as given under Section 2 (f) of the Act. This document is held by and is under the control of a public

authority, and therefore respondent no. 3 had a right to get this document.

There is no dispute regarding the fact that the State Consumer Commission is an instrumentality of the State. Their salary is paid by the consolidated fund of the State Government and their service conditions have been given under the rules framed by the State Government under Section 3 of the Uttar Pradesh Consumer Protection Rules, 1987. The President, Vice President, members of the Commission, public information officer as well as the appellate authority nominated under the Act are all public authorities.

A public authority should facilitate in the easy distribution of information to a citizen. The provisions of the Right to Information Act read in the light of the Constitution of India as well as the Consumer Protection Act speak loud and clear that in the present case, State Consumer Commission was duty bound to furnish a translated copy of its judgment/order once such a requisition was made to it.

The approach of the Consumer Commission, however, was patently wrong. Not only was it in violation of sub-sections (3) and (4) to Section 4 of the Act the approach of the petitioner defeats the objects and goals for which the Right to Information Act was enacted. It is elementary that the language of the State being Hindi not only the information was liable to be given to respondent no. 3 in Hindi but more particularly when such an information was sought in Hindi, it was even more necessary for the Consumer Commission to have

translated its order in Hindi and supplied the copy to the applicant.

The reliance of Article 348 of the Constitution of India by the petitioner, which is applicable to the Parliament, State Legislatures, Supreme Court and the High Courts, is also totally misconceived. Article 348 of the Constitution of India, *inter alia*, provides that the language of High Court will be in English. Now, the State Consumer Disputes Redressal Commission is not a High Court. Consumer Disputes Redressal Commission is a creature of a parliamentary statute and the authorities therein are appointed by the State Government. However, since it is a quasi-judicial body in the nature of a tribunal, its orders are subject to the superintendence of the High Court under Article 227 of the Constitution of India. But to say that since the language of the High Court is English *ipso facto* the language of the Consumer Disputes Redressal Commission will also be in English is totally misconceived.

The consumer commission in its reply to State Information Commission has also stated that the National Consumer Commission has administrative control over the State Consumer Commission under Section 24B of the Consumer Protection Act and the National Commission has never given any instructions to the State Commission to pass its orders in Hindi or to supply translated copies of its orders in Hindi. Since this was one of the defences taken by the petitioner before the State Information Commission, this Court has also examined this aspect. Section 24B of the Consumer Protection Act, 1986 has been perused (which was

inserted by way of an amendment in the Consumer Protection Act in the year 1993). This provision is being reproduced as under :-

“24B. Administrative control. – (1). The National Commission shall have administrative control over all the State Commissions in the following matters, namely :-

(i) calling for periodical return regarding the institution, disposal, pendency of cases;

(ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1)]”

A perusal of the aforesaid provision shows that the National Commission exercises certain administrative control over the State Consumer Commission and has powers to issue instructions to State Consumer Commission, inter alia, for furnishing English translation of judgments written in any language. The very fact that the National Commission has been empowered under the statute to issue instructions to State Consumer Commission to furnish English translation of its judgments which are written in any other language, presupposes that when the State Consumer Commissions writes its orders they are in a language

which is other than English. Only then there would be a necessity for translating such judgments into English! All this is contrary to the pleadings and the defence of the State Consumer Commission. The instructions of the National Commission to the State Consumer Commission, if any, can only be for furnishing a translated copy of its order in English. The National Commission has not been empowered to give instructions to the State Consumer Commission to pass its orders only in English language. Such a submission of the State Consumer Commission before the State Information Commission is totally contrary to the provisions of the Consumer Protection Act.

Another defence of the petitioner in not supplying the copy of the order in Hindi is that its President is a retired Judge of a High Court and since the language of High Court is English and only a retired Judge of a High Court can be the President of Consumer Commission, by logic and implication, it would also mean that the language of Consumer Commission would be English or at least the judgments have to be given only in English. All these grounds, and more, which have been raised before the State Information Commission and now repeated here before this Court in the writ petition, nevertheless, do not help the petitioner. Firstly since petitioner is not a High Court, the defence raised by it of Article 348 of the Constitution of India that the language of the High Court being English, cannot come to its rescue. Article 348, inter alia, declares that the proceedings in a High Court shall be in English language. The inference that since a High Court Judge is the President of the Commission and therefore in the letter

and spirit of Article 348, he can carry the proceedings of the Commission in English language or write orders in English language are wholly misconceived. The President of a State Consumer Commission, as are all the officers and employees of the Commission are employees of State Government. Since the official language of the State of Uttarakhand is Hindi, they have to pass orders in Hindi. In case orders are passed in English then the same must be accompanied by an authorised Hindi translation.

The Consumer Commission is in the State of Uttarakhand, where Hindi is not only the most commonly spoken language but is also the official language of the State. Therefore, the Consumer Commission was wrong to have refused to supply a Hindi translation of its order, when it was specifically asked. In fact its refusal to do so was on patently untenable grounds that there is no arrangement with the authorities for translating orders in Hindi! As if this was not enough, another justification for passing orders in English is that quality orders by the public authority can only be given in English language. By any standards of scrutiny, this can never be accepted as a defence.

The language spoken by people is representative of their culture and identity. It is also vital for the identity of the nation as well as of the province. We must take pride in our language. Hindi is not only the official language of the Union (Article 343 of the Constitution of India), but is also the official language of the State of Uttarakhand (Article 345 of the Constitution of India). Language may have been a vexed question for those who had the onerous task to frame the Constitution of India. But 60

years since the enforcement of the Constitution of India, there should be no doubt in anyone's mind, much less in the mind of a public authority regarding the status of the official language in the State.

There is no merit in the writ petition and it is hereby accordingly dismissed. The order of the State Information Commission dated 1.12.2009 is upheld. It is also directed that the petitioner shall supply the translated copy of the order dated 24.6.2009 passed by the petitioner in First Appeal No. 96 of 2008/ First Appeal No. 111 of 2008, to respondent no. 3 at her address, within a period of two months from today.

Writ petition is disposed of in the aforesaid terms.
No order as to costs.

(Sudhanshu Dhulia, J.)

27.3.2010
Avneet